



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.9582 of 2022

Napolean

..Petitioner

Vs

1.Revenue Divisional Officer,
Highways, Erode.

2.Revenue Tahsildar,
Highways, Kodumudi,
Erode.

3.Assistant Divisional Engineer,
Highways, Kodumudi,
Erode.

..Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records pertaining to the impugned notice issued by the third respondent dated 31.03.2022 under Section 28(2)(ii) and to quash the same.

For the Petitioner	: Mr.K.Kumaresh Babu for Mr.V.Balamurugane
For the Respondents	: Mr.J.Ravindran Addl. Advocate General assisted by Mr.A.Selvendran Spl. Government Pleader for respondent Nos.1 to 3

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition has been filed to challenge the impugned notice dated 31.03.2022 issued under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001.



2. Learned counsel for the petitioner has alleged violation of Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001 [for short, "the Act of 2001"]. It is submitted that though the impugned notice has been issued as provided under Section 28(2)(ii) of the Act of 2001, the respondents have not considered the representation made by the petitioner pursuant to the proviso to Section 28(2)(ii) of the Act of 2001, despite the fact that it was given within a period of seven days from the date of receipt of the notice dated 31.03.2022. Without considering the representation of the petitioner, the third respondent is trying to proceed to remove the encroachment.

3. Learned counsel further submitted that the respondents have failed to inspect and earmark the extent of encroachment of the land and, therefore, the action of the respondents is not legally sustainable, because the petitioner is a title-holder of the land in Survey No.691 of Kollankovil Village.

4. Learned Additional Advocate General submitted that the notice under Section 28(2)(ii) of the Act of 2001 was served on the petitioner only after causing an inspection and survey of the land specifying the area of encroachment to be of 231.75 square feet. In any case, the representation of the petitioner dated 04.04.2022 would be considered before further action is taken in the matter.

5. We have considered the rival submissions and also perused the materials available on record.

6. We do not find any violation of Section 28(2)(ii) of the Act of 2001 by the respondent authorities. After the impugned notice dated 31.03.2022, the petitioner has submitted a representation to the third respondent on 04.04.2022. It has to be considered and therefore encroachment has not been removed as yet.

7. In view of the above, the writ petition is disposed of with a direction to the third respondent to consider and pass orders on the representation of the petitioner dated 04.04.2022 within a period of fifteen days from today and thereupon to proceed further in the matter as per the provisions of law. There will be no order as to costs. Consequently, W.M.P.Nos.9333 and 9334 of 2022 are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



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To:

1.The Revenue Divisional Officer,
Highways, Erode.

2.The Revenue Tahsildar,
Highways, Kodumudi,
Erode.

3.The Assistant Divisional Engineer,
Highways, Kodumudi,
Erode.

+1cc to the Government Pleader, S.R.No.27164

[10/06/2022]

W.P.No.9582 of 2022

AD(CO)
SP(25/04/2022)